

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 338
95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 11, 2009, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Senate Committee Substitute adopted March 30, 2009.

Taken up March 30, 2009. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

1772S.05P

AN ACT

To repeal sections 191.225, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.037, 595.040, 595.045, and 595.060, RSMo, and to enact in lieu thereof twelve new sections relating to crime victims.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.225, 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.037, 595.040, 595.045, and 595.060, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 595.010, 595.015, 595.020, 595.025, 595.027, 595.030, 595.035, 595.037, 595.040, 595.045, 595.060, and 595.220, to read as follows:

595.010. 1. As used in sections 595.010 to 595.075, unless the context requires otherwise, the following terms shall mean:

(1) "Child", a dependent, unmarried person who is under eighteen years of age and includes a posthumous child, stepchild, or an adopted child;

(2) "Claimant", a victim or a dependent, relative, survivor, or member of the family, of a victim eligible for compensation pursuant to sections 595.010 to 595.075;

(3) "Conservator", a person or corporation appointed by a court to have the care and custody of the estate of a minor or a disabled person, including a limited conservator;

(4) "Counseling", problem-solving and support concerning emotional issues

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 that result from criminal victimization licensed pursuant to section
13 595.030. Counseling is a confidential service provided either on an individual
14 basis or in a group. Counseling has as a primary purpose to enhance, protect and
15 restore a person's sense of well-being and social functioning after
16 victimization. Counseling does not include victim advocacy services such as crisis
17 telephone counseling, attendance at medical procedures, law enforcement
18 interviews or criminal justice proceedings;

19 (5) "Crime", an act committed in this state which, if committed by a
20 mentally competent, criminally responsible person who had no legal exemption
21 or defense, would constitute a crime; provided that, such act involves the
22 application of force or violence or the threat of force or violence by the offender
23 upon the victim but shall include the crime of driving while intoxicated, vehicular
24 manslaughter and hit and run; and provided, further, that no act involving the
25 operation of a motor vehicle except driving while intoxicated, vehicular
26 manslaughter and hit and run which results in injury to another shall constitute
27 a crime for the purpose of sections 595.010 to 595.075, unless such injury was
28 intentionally inflicted through the use of a motor vehicle. A crime shall also
29 include an act of terrorism, as defined in 18 U.S.C. section 2331, which has been
30 committed outside of the United States against a resident of Missouri;

31 (6) "Crisis intervention counseling", helping to reduce psychological
32 trauma where victimization occurs;

33 (7) "Department", the department of public safety;

34 (8) "Dependent", mother, father, spouse, spouse's mother, spouse's father,
35 child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly
36 or partially dependent for support upon, and living with, but shall include
37 children entitled to child support but not living with, the victim at the time of his
38 injury or death due to a crime alleged in a claim pursuant to sections 595.010 to
39 [595.070] **595.075**;

40 (9) "Direct service", providing physical services to a victim of crime
41 including, but not limited to, transportation, funeral arrangements, child care,
42 emergency food, clothing, shelter, notification and information;

43 (10) "Director", the director of public safety of this state or a person
44 designated by him for the purposes of sections 595.010 to [595.070] **595.075**;

45 (11) "Disabled person", one who is unable by reason of any physical or
46 mental condition to receive and evaluate information or to communicate decisions
47 to such an extent that the person lacks ability to manage his financial resources,

48 including a partially disabled person who lacks the ability, in part, to manage his
49 financial resources;

50 (12) ["Division", the division of workers' compensation of the state of
51 Missouri;

52 (13)] "Emergency service", those services provided within thirty days to
53 alleviate the immediate effects of the criminal act or offense, and may include
54 cash grants of not more than one hundred dollars;

55 [(14)] (13) "Earnings", net income or net wages;

56 [(15)] (14) "Family", the spouse, parent, grandparent, stepmother,
57 stepfather, child, grandchild, brother, sister, half brother, half sister, adopted
58 children of parent, or spouse's parents;

59 [(16)] (15) "Funeral expenses", the expenses of the funeral, burial,
60 cremation or other chosen method of interment, including plot or tomb and other
61 necessary incidents to the disposition of the remains;

62 [(17)] (16) "Gainful employment", engaging on a regular and continuous
63 basis, up to the date of the incident upon which the claim is based, in a lawful
64 activity from which a person derives a livelihood;

65 [(18)] (17) "Guardian", one appointed by a court to have the care and
66 custody of the person of a minor or of an incapacitated person, including a limited
67 guardian;

68 [(19)] (18) "Hit and run", the crime of leaving the scene of a motor
69 vehicle accident as defined in section 577.060, RSMo;

70 [(20)] (19) "Incapacitated person", one who is unable by reason of any
71 physical or mental condition to receive and evaluate information or to
72 communicate decisions to such an extent that he lacks capacity to meet essential
73 requirements for food, clothing, shelter, safety or other care such that serious
74 physical injury, illness, or disease is likely to occur, including a partially
75 incapacitated person who lacks the capacity to meet, in part, such essential
76 requirements;

77 [(21)] (20) "Injured victim", a person:

78 (a) Killed or receiving a personal physical injury in this state as a result
79 of another person's commission of or attempt to commit any crime;

80 (b) Killed or receiving a personal physical injury in this state while in a
81 good faith attempt to assist a person against whom a crime is being perpetrated
82 or attempted;

83 (c) Killed or receiving a personal physical injury in this state while

84 assisting a law enforcement officer in the apprehension of a person who the
85 officer has reason to believe has perpetrated or attempted a crime;

86 [(22)] (21) "Law enforcement official", a sheriff and his regular deputies,
87 municipal police officer or member of the Missouri state highway patrol and such
88 other persons as may be designated by law as peace officers;

89 [(23)] (22) "Offender", a person who commits a crime;

90 [(24)] (23) "Personal physical injury", actual bodily harm only with
91 respect to the victim. Personal physical injury may include mental or nervous
92 shock resulting from the specific incident upon which the claim is based;

93 [(25)] (24) "Private agency", a not-for-profit corporation, in good standing
94 in this state, which provides services to victims of crime and their dependents;

95 [(26)] (25) "Public agency", a part of any local or state government
96 organization which provides services to victims of crime;

97 [(27)] (26) "Relative", the spouse of the victim or a person related to the
98 victim within the third degree of consanguinity or affinity as calculated according
99 to civil law;

100 [(28)] (27) "Survivor", the spouse, parent, legal guardian, grandparent,
101 sibling or child of the deceased victim of the victim's household at the time of the
102 crime;

103 [(29)] (28) "Victim", a person who suffers personal physical injury or
104 death as a direct result of a crime, as defined in subdivision (5) of this subsection;

105 [(30)] (29) "Victim advocacy", assisting the victim of a crime and his
106 dependents to acquire services from existing community resources.

107 2. As used in sections 565.024 and 565.060, RSMo, and sections 595.010
108 to 595.075, the term "alcohol-related traffic offense" means those offenses defined
109 by sections 577.001, 577.010, and 577.012, RSMo, and any county or municipal
110 ordinance which prohibits operation of a motor vehicle while under the influence
111 of alcohol.

595.015. 1. The [division of workers' compensation] **department of**
2 **public safety** shall, pursuant to the provisions of sections 595.010 to 595.075,
3 have jurisdiction to determine and award compensation to, or on behalf of, victims
4 of crimes. **In making such determinations and awards, the department**
5 **shall ensure the compensation sought is reasonable and consistent with**
6 **the limitations described in sections 595.010 to 595.075. Additionally,**
7 **if compensation being sought includes medical expenses, the**
8 **department shall further ensure that such expenses are medically**

9 **necessary.** The [division of workers' compensation] **department of public**
10 **safety** may pay directly to the provider of the services compensation for medical
11 or funeral expenses, or expenses for other services as described in section
12 595.030, incurred by the claimant. The [division] **department** is not required
13 to provide compensation in any case, nor is it required to award the full amount
14 claimed. The [division] **department** shall make its award of compensation based
15 upon independent verification obtained during its investigation.

16 2. Such claims shall be made by filing an application for compensation
17 with the [division of workers' compensation] **department of public safety.** The
18 application form shall be furnished by the [division] **department** and the
19 signature shall be notarized. The application shall include:

- 20 (1) The name and address of the victim;
- 21 (2) If the claimant is not the victim, the name and address of the claimant
22 and relationship to the victim, the names and addresses of the victim's
23 dependents, if any, and the extent to which each is so dependent;
- 24 (3) The date and nature of the crime or attempted crime on which the
25 application for compensation is based;
- 26 (4) The date and place where, and the law enforcement officials to whom,
27 notification of the crime was given;
- 28 (5) The nature and extent of the injuries sustained by the victim, the
29 names and addresses of those giving medical and hospital treatment to the victim
30 and whether death resulted;
- 31 (6) The loss to the claimant or a dependent resulting from the injury or
32 death;
- 33 (7) The amount of benefits, payments or awards, if any, payable from any
34 source which the claimant or dependent has received or for which the claimant
35 or dependent is eligible as a result of the injury or death;
- 36 (8) Releases authorizing the surrender to the [division] **department** of
37 reports, documents and other information relating to the matters specified under
38 this section; and
- 39 (9) Such other information as the [division] **department** determines is
40 necessary.

41 3. In addition to the application, the [division] **department** may require
42 that the claimant submit materials substantiating the facts stated in the
43 application.

44 4. If the [division] **department** finds that an application does not contain

45 the required information or that the facts stated therein have not been
46 substantiated, it shall notify the claimant in writing of the specific additional
47 items of information or materials required and that the claimant has thirty days
48 from the date of mailing in which to furnish those items to the [division]
49 **department**. Unless a claimant requests and is granted an extension of time by
50 the [division] **department**, the [division] **department** shall reject with
51 prejudice the claim of the claimant for failure to file the additional information
52 or materials within the specified time.

53 5. The claimant may file an amended application or additional
54 substantiating materials to correct inadvertent errors or omissions at any time
55 before the [division] **department** has completed its consideration of the original
56 application.

57 6. The claimant, victim or dependent shall cooperate with law enforcement
58 officials in the apprehension and prosecution of the offender in order to be
59 eligible, or the [division] **department** has found that the failure to cooperate was
60 for good cause.

61 7. Any state or local agency, including a prosecuting attorney or law
62 enforcement agency, shall make available without cost to the fund, all reports,
63 files and other appropriate information which the [division] **department**
64 requests in order to make a determination that a claimant is eligible for an award
65 pursuant to sections 595.010 to 595.075.

595.020. 1. Except as hereinafter provided, the following persons shall
2 be eligible for compensation pursuant to sections 595.010 to 595.075:

3 (1) A victim of a crime;

4 (2) In the case of a sexual assault victim:

5 (a) A relative of the victim requiring counseling in order to better assist
6 the victim in his recovery; and

7 (3) In the case of the death of the victim as a direct result of the crime:

8 (a) A dependent of the victim;

9 (b) Any member of the family who legally assumes the obligation, or who
10 pays the medical or burial expenses incurred as a direct result thereof; and

11 (c) A survivor of the victim requiring counseling as a direct result of the
12 death of the victim.

13 2. An offender or an accomplice of an offender shall in no case be eligible
14 to receive compensation with respect to a crime committed by the offender. No
15 victim or dependent shall be denied compensation solely because he is a relative

16 of the offender or was living with the offender as a family or household member
17 at the time of the injury or death. However, the [division] **department** may
18 award compensation to a victim or dependent who is a relative, family or
19 household member of the offender only if the [division] **department** can
20 reasonably determine the offender will receive no substantial economic benefit or
21 unjust enrichment from the compensation.

22 3. No compensation of any kind may be made to a victim or intervenor
23 injured while confined in any federal, state, county, or municipal jail, prison or
24 other correctional facility, including house arrest **or electronic monitoring**.

25 4. No compensation of any kind may be made to a victim who has been
26 finally adjudicated and found guilty, in a criminal prosecution under the laws of
27 this state, of two felonies within the past ten years, of which one or both involves
28 illegal drugs or violence. The [division] **department** may waive this restriction
29 if it determines that the interest of justice would be served otherwise.

30 5. In the case of a claimant who is not otherwise ineligible pursuant to
31 subsection 4 of this section, who is incarcerated as a result of a conviction of a
32 crime not related to the incident upon which the claim is based at the time of
33 application, or at any time following the filing of the application:

34 (1) The [division] **department** shall suspend all proceedings and
35 payments until such time as the claimant is released from incarceration;

36 (2) The [division] **department** shall notify the applicant at the time the
37 proceedings are suspended of the right to reactivate the claim within six months
38 of release from incarceration. The notice shall be deemed sufficient if mailed to
39 the applicant at the applicant's last known address;

40 (3) The claimant shall file an application to request that the case be
41 reactivated not later than six months after the date the claimant is released from
42 incarceration. Failure to file such request within the six-month period shall serve
43 as a bar to any recovery.

44 6. Victims of crime who are not residents of the state of Missouri may be
45 compensated only when federal funds are available for that
46 purpose. Compensation for nonresident victims shall terminate when federal
47 funds for that purpose are no longer available.

48 7. A Missouri resident who suffers personal physical injury or, in the case
49 of death, a dependent of the victim or any member of the family who legally
50 assumes the obligation, or who pays the medical or burial expenses incurred as
51 a direct result thereof, in another state, possession or territory of the United

52 States may make application for compensation in Missouri if:

53 (1) The victim of the crime would be compensated if the crime had
54 occurred in the state of Missouri;

55 (2) The place that the crime occurred is a state, possession or territory of
56 the United States, or location outside of the United States that is covered and
57 defined in 18 U.S.C. section 2331, that does not have a crime victims'
58 compensation program for which the victim is eligible and which provides at least
59 the same compensation that the victim would have received if he had been
60 injured in Missouri.

595.025. 1. A claim for compensation may be filed by a person eligible for
2 compensation or, if the person is an incapacitated or disabled person, or a minor,
3 by the person's spouse, parent, conservator, or guardian.

4 2. A claim shall be filed not later than two years after the occurrence of
5 the crime or the discovery of the crime upon which it is based.

6 3. Each claim shall be filed in person or by mail. The [division of workers'
7 compensation] **department of public safety** shall investigate such claim, prior
8 to the opening of formal proceedings. The claimant shall be notified of the date
9 and time of any hearing on such claim. In determining the amount of
10 compensation for which a claimant is eligible, the [division] **department** shall
11 consider the facts stated on the application filed pursuant to section 595.015, and:

12 (1) Need not consider whether or not the alleged assailant has been
13 apprehended or brought to trial or the result of any criminal proceedings against
14 that person; however, if any person is convicted of the crime which is the basis
15 for an application for compensation, proof of the conviction shall be conclusive
16 evidence that the crime was committed;

17 (2) Shall determine the amount of the loss to the claimant, or the victim's
18 survivors or dependents;

19 (3) Shall determine the degree or extent to which the victim's acts or
20 conduct provoked, incited, or contributed to the injuries or death of the victim.

21 4. The claimant may present evidence and testimony on his own behalf
22 or may retain counsel. The [division of workers' compensation] **department of**
23 **public safety** may, as part of any award entered under sections 595.010 to
24 595.075, determine and allow reasonable attorney's fees, which shall not exceed
25 fifteen percent of the amount awarded as compensation under sections 595.010
26 to 595.075, which fee shall be paid out of, but not in addition to, the amount of
27 compensation, to the attorney representing the claimant. No attorney for the

28 claimant shall ask for, contract for or receive any larger sum than the amount so
29 allowed.

30 5. The person filing a claim shall, prior to any hearing thereon, submit
31 reports, if available, from all hospitals, physicians or surgeons who treated or
32 examined the victim for the injury for which compensation is sought. If, in the
33 opinion of the [division of workers' compensation] **department of public**
34 **safety**, an examination of the injured victim and a report thereon, or a report on
35 the cause of death of the victim, would be of material aid, the [division of
36 workers' compensation] **department of public safety** may appoint a duly
37 qualified, impartial physician to make such examination and report.

38 6. Each and every payment shall be exempt from attachment,
39 garnishment or any other remedy available to creditors for the collection of a
40 debt.

41 7. Payments of compensation shall not be made directly to any person
42 legally incompetent to receive them but shall be made to the parent, guardian or
43 conservator for the benefit of such minor, disabled or incapacitated person.

595.027. 1. Upon request by the [division] **department** for verification
2 of injuries of victims, medical providers shall submit the information requested
3 by the [division] **department** within twenty working days of the request at no
4 cost to the fund.

5 2. For purposes of this section, "medical providers" means physicians,
6 **pharmacists**, dentists, clinical psychologists, optometrists, podiatrists,
7 registered nurses, physician's assistants, chiropractors, physical therapists,
8 hospitals, **pharmacies**, ambulatory surgical centers, and nursing homes.

9 3. Failure to submit the information as required by this section shall be
10 an infraction.

595.030. 1. No compensation shall be paid unless the claimant has
2 incurred an out-of-pocket loss of at least fifty dollars or has lost two continuous
3 weeks of earnings or support from gainful employment. "Out-of-pocket loss" shall
4 mean unreimbursed or unreimbursable expenses or indebtedness reasonably
5 incurred:

6 (1) For medical care or other services, including psychiatric, psychological
7 or counseling expenses, necessary as a result of the crime upon which the claim
8 is based, except that the amount paid for psychiatric, psychological or counseling
9 expenses per eligible claim shall not exceed two thousand five hundred dollars;
10 or

11 (2) As a result of personal property being seized in an investigation by law
12 enforcement. Compensation paid for an out-of-pocket loss under this subdivision
13 shall be in an amount equal to the loss sustained, but shall not exceed two
14 hundred fifty dollars.

15 2. No compensation shall be paid unless the [division of workers'
16 compensation] **department of public safety** finds that a crime was committed,
17 that such crime directly resulted in personal physical injury to, or the death of,
18 the victim, and that police records show that such crime was promptly reported
19 to the proper authorities. In no case may compensation be paid if the police
20 records show that such report was made more than forty-eight hours after the
21 occurrence of such crime, unless the [division of workers' compensation]
22 **department of public safety** finds that the report to the police was delayed for
23 good cause. If the victim is under eighteen years of age such report may be made
24 by the victim's parent, guardian or custodian; by a physician, a nurse, or hospital
25 emergency room personnel; by the division of family services personnel; or by any
26 other member of the victim's family. In the case of a sexual offense, filing a
27 report of the offense to the proper authorities may include, but not be limited to,
28 the filing of the report of the forensic examination by the appropriate medical
29 provider, as defined in section [191.225, RSMo] **595.220**, with the prosecuting
30 attorney of the county in which the alleged incident occurred.

31 3. No compensation shall be paid for medical care if the service provider
32 is not a medical provider as that term is defined in section 595.027, and the
33 individual providing the medical care is not licensed by the state of Missouri or
34 the state in which the medical care is provided.

35 4. No compensation shall be paid for psychiatric treatment or other
36 counseling services, including psychotherapy, unless the service provider is a:

37 (1) Physician licensed pursuant to chapter 334, RSMo, or licensed to
38 practice medicine in the state in which the service is provided;

39 (2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to
40 practice psychology in the state in which the service is provided;

41 (3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

42 (4) Professional counselor licensed pursuant to chapter 337, RSMo.

43 5. Any compensation paid pursuant to sections 595.010 to 595.075 for
44 death or personal injury shall be in an amount not exceeding out-of-pocket loss,
45 together with loss of earnings or support from gainful employment, not to exceed
46 two hundred dollars per week, resulting from such injury or death. In the event

47 of death of the victim, an award may be made for reasonable and necessary
48 expenses actually incurred for preparation and burial not to exceed five thousand
49 dollars.

50 6. Any compensation for loss of earnings or support from gainful
51 employment shall be in an amount equal to the actual loss sustained not to
52 exceed two hundred dollars per week; provided, however, that no award pursuant
53 to sections 595.010 to 595.075 shall exceed twenty-five thousand dollars. If two
54 or more persons are entitled to compensation as a result of the death of a person
55 which is the direct result of a crime or in the case of a sexual assault, the
56 compensation shall be apportioned by the [division of workers' compensation]
57 **department of public safety** among the claimants in proportion to their loss.

58 7. The method and timing of the payment of any compensation pursuant
59 to sections 595.010 to 595.075 shall be determined by the [division] **department**.

595.035. 1. For the purpose of determining the amount of compensation
2 payable pursuant to sections 595.010 to 595.075, the [division of workers'
3 compensation] **department of public safety** shall, insofar as practicable,
4 formulate standards for the uniform application of sections 595.010 to 595.075,
5 taking into consideration the provisions of sections 595.010 to 595.075, the rates
6 and amounts of compensation payable for injuries and death pursuant to other
7 laws of this state and of the United States, excluding pain and suffering, and the
8 availability of funds appropriated for the purpose of sections 595.010 to 595.075.
9 All decisions of the [division of workers' compensation] **department of public**
10 **safety** on claims [heard] pursuant to sections 595.010 to 595.075 shall be in
11 writing, setting forth the name of the claimant, the amount of compensation and
12 the reasons for the decision. The [division of workers' compensation]
13 **department of public safety** shall immediately notify the claimant in writing
14 of the decision and shall forward to the state treasurer a certified copy of the
15 decision and a warrant for the amount of the claim. The state treasurer, upon
16 certification by the commissioner of administration, shall, if there are sufficient
17 funds in the crime victims' compensation fund, pay to or on behalf of the claimant
18 the amount determined by the [division] **department**.

19 2. The crime victims' compensation fund is not a state health program and
20 is not intended to be used as a primary payor to other health care assistance
21 programs, but is a public, quasi-charitable fund whose fundamental purpose is
22 to assist victims of violent crimes through a period of financial hardship, as a
23 payor of last resort. Accordingly, any compensation paid pursuant to sections

24 595.010 to 595.075 shall be reduced by the amount of any payments, benefits or
25 awards received or to be received as a result of the injury or death:

26 (1) From or on behalf of the offender;

27 (2) Under private or public insurance programs, including champus,
28 Medicare, Medicaid and other state or federal programs, but not including any
29 life insurance proceeds; or

30 (3) From any other public or private funds, including an award payable
31 pursuant to the workers' compensation laws of this state.

32 3. In determining the amount of compensation payable, the [division of
33 workers' compensation] **department of public safety** shall determine whether,
34 because of the victim's consent, provocation, incitement or negligence, the victim
35 contributed to the infliction of the victim's injury or death, and shall reduce the
36 amount of the compensation or deny the claim altogether, in accordance with such
37 determination; provided, however, that the [division of workers' compensation]
38 **department of public safety** may disregard the responsibility of the victim for
39 his or her own injury where such responsibility was attributable to efforts by the
40 victim to aid a victim, or to prevent a crime or an attempted crime from occurring
41 in his or her presence, or to apprehend a person who had committed a crime in
42 his or her presence or had in fact committed a felony.

43 4. In determining the amount of compensation payable pursuant to
44 sections 595.010 to [595.070] **595.075**, monthly Social Security disability or
45 retirement benefits received by the victim shall not be considered by the
46 [division] **department** as a factor for reduction of benefits.

47 5. The [division] **department** shall not be liable for payment of
48 compensation for any out-of-pocket expenses incurred more than three years
49 following the date of the occurrence of the crime upon which the claim is based.

595.037. 1. All information submitted to the **department or division of**
2 **workers' compensation** and any hearing of the division **of workers'**
3 **compensation** on a claim filed pursuant to sections 595.010 to [595.070]
4 **595.075** shall be open to the public except for the following claims which shall be
5 deemed closed and confidential:

6 (1) A claim in which the alleged assailant has not been brought to trial
7 and disclosure of the information or a public hearing would adversely affect either
8 the apprehension, or the trial, of the alleged assailant;

9 (2) A claim in which the offense allegedly perpetrated against the victim
10 is rape, sodomy or sexual abuse and it is determined by the **department or**

11 division of **workers' compensation** to be in the best interest of the victim or
12 of the victim's dependents that the information be kept confidential or that the
13 public be excluded from the hearing;

14 (3) A claim in which the victim or alleged assailant is a minor; or

15 (4) A claim in which any record or report obtained by the **department**
16 or division of **workers' compensation**, the confidentiality of which is protected
17 by any other law, shall remain confidential subject to such law.

18 2. The **department and division of workers' compensation**, by
19 separate order, may close any record, report or hearing if it determines that the
20 interest of justice would be frustrated rather than furthered if such record or
21 report was disclosed or if the hearing was open to the public.

595.040. 1. Acceptance of any compensation under sections 595.010 to
2 595.075 shall subrogate this state, to the extent of such compensation paid, to any
3 right or right of action accruing to the claimant or to the victim to recover
4 payments on account of losses resulting from the crime with respect to which the
5 compensation has been paid. The attorney general may enforce the subrogation,
6 and he shall bring suit to recover from any person to whom compensation is paid,
7 to the extent of the compensation actually paid under sections 595.010 to 595.075,
8 any amount received by the claimant from any source exceeding the actual loss
9 to the victim.

10 2. The **[division] department** shall have a lien on any compensation
11 received by the claimant, in addition to compensation received under provisions
12 of sections 595.010 to 595.075, for injuries or death resulting from the incident
13 upon which the claim is based. The claimant shall retain, as trustee for the
14 **[division] department**, so much of the recovered funds as necessary to reimburse
15 the Missouri crime victims' compensation fund to the extent that compensation
16 was awarded to the claimant from that fund.

17 3. If a claimant initiates any legal proceeding to recover restitution or
18 damages related to the crime upon which the claim is based, or if the claimant
19 enters into negotiations to receive any proceeds in settlement of a claim for
20 restitution or damages related to the crime, the claimant shall give the **[division]**
21 **department** written notice within fifteen days of the filing of the action or
22 entering into negotiations. The **[division] department** may intervene in the
23 proceeding of a complainant to recover the compensation awarded. If a claimant
24 fails to give such written notice to the **[division] department** within the stated
25 time period, or prior to any attempt by claimant to reach a negotiated settlement

26 of claims for recovery of damages related to the crime upon which the claim is
27 based, the [division's] **department's** right of subrogation to receive or recover
28 funds from claimant, to the extent that compensation was awarded by the
29 [division] **department**, shall not be reduced in any amount or percentage by the
30 costs incurred by claimant attributable to such legal proceedings or settlement,
31 including, but not limited to, attorney's fees, investigative cost or cost of court. If
32 such notice is given, attorney fees may be awarded in an amount not to exceed
33 fifteen percent of the amount subrogated to the [division] **department**.

34 4. Whenever compensation is awarded to a claimant who is entitled to
35 restitution from a criminal defendant, the [division] **department** may initiate
36 restitution hearings in such criminal proceedings or intervene in the same. The
37 [division] **department** shall be entitled to receive restitution in such proceedings
38 to the extent compensation was awarded; provided, however, the [division]
39 **department** shall be exempt from the payment of any fees or other charges for
40 the recording of restitution orders in the offices of the judges of probate. The
41 claimant shall notify this [division] **department** when restitution is
42 ordered. Failure to notify the [division] **department** will result in possible
43 forfeiture of any amount already received from the [division] **department**.

44 5. Whenever the [division] **department** shall deem it necessary to
45 protect, maintain or enforce the [division's] **department's** right to subrogation
46 or to exercise any of its powers or to carry out any of its duties or responsibilities,
47 the attorney general may initiate legal proceedings or intervene in legal
48 proceedings as the [division's] **department's** legal representative.

595.045. 1. There is established in the state treasury the "Crime Victims'
2 Compensation Fund". A surcharge of seven dollars and fifty cents shall be
3 assessed as costs in each court proceeding filed in any court in the state in all
4 criminal cases including violations of any county ordinance or any violation of
5 criminal or traffic laws of the state, including an infraction and violation of a
6 municipal ordinance; except that no such fee shall be collected in any proceeding
7 in any court when the proceeding or the defendant has been dismissed by the
8 court or when costs are to be paid by the state, county, or municipality. A
9 surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile
10 court proceeding in which a child is found by the court to come within the
11 applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

12 2. Notwithstanding any other provision of law to the contrary, the moneys
13 collected by clerks of the courts pursuant to the provisions of subsection 1 of this

14 section shall be collected and disbursed in accordance with sections 488.010 to
15 488.020, RSMo, and shall be payable to the director of the department of revenue.

16 3. The director of revenue shall deposit annually the amount of two
17 hundred fifty thousand dollars to the state forensic laboratory account
18 administered by the department of public safety to provide financial assistance
19 to defray expenses of crime laboratories if such analytical laboratories are
20 registered with the federal Drug Enforcement Agency or the Missouri department
21 of health and senior services. Subject to appropriations made therefor, such
22 funds shall be distributed by the department of public safety to the crime
23 laboratories serving the courts of this state making analysis of a controlled
24 substance or analysis of blood, breath or urine in relation to a court proceeding.

25 4. The remaining funds collected under subsection 1 of this section shall
26 be denoted to the payment of an annual appropriation for the administrative and
27 operational costs of the office for victims of crime and, if a statewide automated
28 crime victim notification system is established pursuant to section 650.310,
29 RSMo, to the monthly payment of expenditures actually incurred in the operation
30 of such system. Additional remaining funds shall be subject to the following
31 provisions:

32 (1) On the first of every month, the director of revenue or the director's
33 designee shall determine the balance of the funds in the crime victims'
34 compensation fund available to satisfy the amount of compensation payable
35 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

36 (2) Beginning on September 1, 2004, and on the first of each month, the
37 director of revenue or the director's designee shall deposit fifty percent of the
38 balance of funds available to the credit of the crime victims' compensation fund
39 and fifty percent to the services to victims' fund established in section 595.100.

40 5. The director of revenue or such director's designee shall at least
41 monthly report the moneys paid pursuant to this section into the crime victims'
42 compensation fund and the services to victims fund to the [division of workers'
43 compensation and the] department of public safety[, respectively].

44 6. The moneys collected by clerks of municipal courts pursuant to
45 subsection 1 of this section shall be collected and disbursed as provided by
46 sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable
47 to the city treasury of the city from which such funds were collected. The
48 remaining ninety-five percent of such moneys shall be payable to the director of
49 revenue. The funds received by the director of revenue pursuant to this

50 subsection shall be distributed as follows:

51 (1) On the first of every month, the director of revenue or the director's
52 designee shall determine the balance of the funds in the crime victims'
53 compensation fund available to satisfy the amount of compensation payable
54 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

55 (2) Beginning on September 1, 2004, and on the first of each month the
56 director of revenue or the director's designee shall deposit fifty percent of the
57 balance of funds available to the credit of the crime victims' compensation fund
58 and fifty percent to the services to victims' fund established in section 595.100.

59 7. These funds shall be subject to a biennial audit by the Missouri state
60 auditor. Such audit shall include all records associated with crime victims'
61 compensation funds collected, held or disbursed by any state agency.

62 8. In addition to the moneys collected pursuant to subsection 1 of this
63 section, the court shall enter a judgment in favor of the state of Missouri, payable
64 to the crime victims' compensation fund, of sixty-eight dollars upon a plea of
65 guilty or a finding of guilt for a class A or B felony; forty-six dollars upon a plea
66 of guilty or finding of guilt for a class C or D felony; and ten dollars upon a plea
67 of guilty or a finding of guilt for any misdemeanor under Missouri law except for
68 those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo,
69 relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating
70 to motor vehicle financial responsibility, chapter 304, RSMo, relating to traffic
71 regulations, chapter 306, RSMo, relating to watercraft regulation and licensing,
72 and chapter 307, RSMo, relating to vehicle equipment regulations. Any clerk of
73 the court receiving moneys pursuant to such judgments shall collect and disburse
74 such crime victims' compensation judgments in the manner provided by sections
75 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and
76 deposited to the credit of the crime victims' compensation fund.

77 9. The clerk of the court processing such funds shall maintain records of
78 all dispositions described in subsection 1 of this section and all dispositions where
79 a judgment has been entered against a defendant in favor of the state of Missouri
80 in accordance with this section; all payments made on judgments for
81 alcohol-related traffic offenses; and any judgment or portion of a judgment
82 entered but not collected. These records shall be subject to audit by the state
83 auditor. The clerk of each court transmitting such funds shall report separately
84 the amount of dollars collected on judgments entered for alcohol-related traffic
85 offenses from other crime victims' compensation collections or services to victims

86 collections.

87 10. The department of revenue shall maintain records of funds
88 transmitted to the crime victims' compensation fund by each reporting court and
89 collections pursuant to subsection 16 of this section and shall maintain separate
90 records of collection for alcohol-related offenses.

91 11. The state courts administrator shall include in the annual report
92 required by section 476.350, RSMo, the circuit court caseloads and the number
93 of crime victims' compensation judgments entered.

94 12. All awards made to injured victims under sections 595.010 to 595.105
95 and all appropriations for administration of sections 595.010 to 595.105, except
96 sections 595.050 and 595.055, shall be made from the crime victims' compensation
97 fund. Any unexpended balance remaining in the crime victims' compensation
98 fund at the end of each biennium shall not be subject to the provision of section
99 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary
100 revenue fund of the state, but shall remain in the crime victims' compensation
101 fund. In the event that there are insufficient funds in the crime victims'
102 compensation fund to pay all claims in full, all claims shall be paid on a pro rata
103 basis. If there are no funds in the crime victims' compensation fund, then no
104 claim shall be paid until funds have again accumulated in the crime victims'
105 compensation fund. When sufficient funds become available from the fund,
106 awards which have not been paid shall be paid in chronological order with the
107 oldest paid first. In the event an award was to be paid in installments and some
108 remaining installments have not been paid due to a lack of funds, then when
109 funds do become available that award shall be paid in full. All such awards on
110 which installments remain due shall be paid in full in chronological order before
111 any other postdated award shall be paid. Any award pursuant to this subsection
112 is specifically not a claim against the state, if it cannot be paid due to a lack of
113 funds in the crime victims' compensation fund.

114 13. When judgment is entered against a defendant as provided in this
115 section and such sum, or any part thereof, remains unpaid, there shall be
116 withheld from any disbursement, payment, benefit, compensation, salary, or other
117 transfer of money from the state of Missouri to such defendant an amount equal
118 to the unpaid amount of such judgment. Such amount shall be paid forthwith to
119 the crime victims' compensation fund and satisfaction of such judgment shall be
120 entered on the court record. Under no circumstances shall the general revenue
121 fund be used to reimburse court costs or pay for such judgment. The director of

122 the department of corrections shall have the authority to pay into the crime
123 victims' compensation fund from an offender's compensation or account the
124 amount owed by the offender to the crime victims' compensation fund, provided
125 that the offender has failed to pay the amount owed to the fund prior to entering
126 a correctional facility of the department of corrections.

127 14. All interest earned as a result of investing funds in the crime victims'
128 compensation fund shall be paid into the crime victims' compensation fund and
129 not into the general revenue of this state.

130 15. Any person who knowingly makes a fraudulent claim or false
131 statement in connection with any claim hereunder is guilty of a class A
132 misdemeanor.

133 16. [Any gifts, contributions, grants or federal funds specifically given to
134 the division for the benefit of victims of crime shall be credited to the crime
135 victims' compensation fund. Payment or expenditure of moneys in such funds
136 shall comply with any applicable federal crime victims' compensation laws, rules,
137 regulations or other applicable federal guidelines] **The department may**
138 **receive gifts and contributions for the benefit of crime victims. Such**
139 **gifts and contributions shall be credited to the crime victims'**
140 **compensation fund as used solely for compensating victims under the**
141 **provisions of sections 595.010 to 595.075.**

595.060. The director shall promulgate rules and regulations necessary
2 to implement the provisions of sections 595.010 to [595.070] **595.220** as provided
3 in this section and chapter 536, RSMo. In the performance of its functions under
4 [sections 595.010 to 595.070] **section 595.036**, the division **of workers'**
5 **compensation** is authorized to promulgate rules pursuant to chapter 536, RSMo,
6 prescribing the procedures to be followed in the [filing of applications and the]
7 proceedings under [sections 595.010 to 595.070] **section 595.036**. [No rule or
8 portion of a rule promulgated under the authority of this chapter shall become
9 effective unless it has been promulgated pursuant to the provisions of section
10 536.024, RSMo.] **Any rule or portion of a rule, as that term is defined in**
11 **section 536.010, RSMo, that is created under the authority delegated in**
12 **this section shall become effective only if it complies with and is**
13 **subject to all of the provisions of chapter 536, RSMo, and, if applicable,**
14 **section 536.028, RSMo. This section and chapter 536, RSMo, are**
15 **nonseverable and if any of the powers vested with the general assembly**
16 **pursuant to chapter 536, RSMo, to review, to delay the effective date,**

17 or to disapprove and annul a rule are subsequently held
18 unconstitutional, then the grant of rulemaking authority and any rule
19 proposed or adopted after August 28, 2009, shall be invalid and void.

595.220. 1. The department of public safety shall make payments
2 to appropriate medical providers, out of appropriations made for that
3 purpose, to cover the reasonable and medically necessary charges of
4 the forensic examination of persons who may be a victim of a sexual
5 offense if:

6 (1) The victim or the victim's guardian consents in writing to the
7 examination; and

8 (2) The report of the examination is made on a form approved by
9 the attorney general with the advice of the department of public safety.

10 2. A minor may consent to examination under this section. Such
11 consent is not subject to disaffirmance because of minority, and consent
12 of parent or guardian of the minor is not required for such
13 examination. The appropriate medical provider making the
14 examination shall give written notice to the parent or guardian of a
15 minor that such an examination has taken place.

16 3. The attorney general, with the advice of the department of
17 public safety, shall develop the forms and procedures for gathering
18 evidence during the forensic examination under the provisions of this
19 section. The department of health and senior services shall develop a
20 checklist, protocols, and procedures for appropriate medical providers
21 to refer to while providing medical treatment to victims of a sexual
22 offense, including those specific to victims who are minors.

23 4. Evidentiary collection kits shall be developed and made
24 available, subject to appropriation, to appropriate medical providers
25 by the highway patrol or its designees and eligible crime
26 laboratories. Such kits shall be distributed with the forms and
27 procedures for gathering evidence during forensic examinations of
28 victims of a sexual offense to appropriate medical providers upon
29 request of the provider, in the amount requested, and at no charge to
30 the medical provider. All appropriate medical providers shall, with the
31 written consent of the victim, perform a forensic examination using the
32 evidentiary collection kit, or other collection procedures developed for
33 victims who are minors, and forms and procedures for gathering
34 evidence following the checklist for any person presenting as a victim

35 of a sexual offense.

36 5. In reviewing claims submitted under this section, the
37 department shall first determine if the claim was submitted within
38 ninety days of the examination. If the claim is submitted within ninety
39 days, the department shall, at a minimum, use the following criteria in
40 reviewing the claim:

41 (1) The alleged sexual offense occurred in Missouri;

42 (2) Examination charges submitted shall be itemized and fall
43 within the definition of "forensic examination" as defined in subdivision
44 (3) of subsection 7 of this section.

45 6. All appropriate medical provider charges for eligible forensic
46 examinations shall be billed to and paid by the department of public
47 safety. No appropriate medical provider conducting forensic
48 examinations and providing medical treatment to victims of sexual
49 offenses shall charge the victim for the forensic examination. For
50 appropriate medical provider charges related to the medical treatment
51 of victims of sexual offenses, if the victim is an eligible claimant under
52 the crime victims' compensation fund, the victim shall seek
53 compensation under sections 595.010 to 595.075.

54 7. For purposes of this section, the following terms mean:

55 (1) "Appropriate medical provider", any licensed nurse,
56 physician, or physician assistant, and any institution employing
57 licensed nurses, physicians, or physician assistants, provided that such
58 licensed professionals are the only persons at such institution to
59 perform tasks under the provisions of this section;

60 (2) "Evidentiary collection kit", a kit used during a forensic
61 examination that includes materials necessary for appropriate medical
62 providers to gather evidence in accordance with the forms and
63 procedures developed by the attorney general for forensic
64 examinations;

65 (3) "Forensic examination", an examination performed by an
66 appropriate medical provider on a victim of an alleged sexual offense
67 to gather evidence for the evidentiary collection kit or using other
68 collection procedures developed for victims who are minors;

69 (4) "Medical treatment", the treatment of all injuries and health
70 concerns resulting directly from a patient's sexual assault or
71 victimization.

72 **8. The department shall have authority to promulgate rules and**
73 **regulations necessary to implement the provisions of this section. Any**
74 **rule or portion of a rule, as that term is defined in section 536.010,**
75 **RSMo, that is created under the authority delegated in this section**
76 **shall become effective only if it complies with and is subject to all of**
77 **the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
78 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any**
79 **of the powers vested with the general assembly pursuant to chapter**
80 **536, RSMo, to review, to delay the effective date, or to disapprove and**
81 **annul a rule are subsequently held unconstitutional, then the grant of**
82 **rulemaking authority and any rule proposed or adopted after August**
83 **28, 2009, shall be invalid and void.**

 [191.225. 1. The department of health and senior services
2 shall make payments to appropriate medical providers, out of
3 appropriations made for that purpose, to cover the charges of the
4 forensic examination of persons who may be a victim of a sexual
5 offense if:

6 (1) The victim or the victim's guardian consents in writing
7 to the examination;

8 (2) The report of the examination is made on a form
9 approved by the attorney general with the advice of the department
10 of health and senior services; and

11 (3) The report of the examination is filed with the
12 prosecuting attorney of the county in which the alleged incident
13 occurred.

14 The appropriate medical provider shall file the report of the
15 examination within three business days of completion of the
16 forensic exam.

17 2. A minor may consent to examination under this
18 section. Such consent is not subject to disaffirmance because of
19 minority, and consent of parent or guardian of the minor is not
20 required for such examination. The appropriate medical provider
21 making the examination shall give written notice to the parent or
22 guardian of a minor that such an examination has taken place.

23 3. The attorney general, with the advice of the department
24 of health and senior services, shall develop the forms and

25 procedures for gathering evidence during the forensic examination
26 under the provisions of this section. The department of health and
27 senior services shall develop a checklist for appropriate medical
28 providers to refer to while providing medical treatment to victims
29 of a sexual offense.

30 4. Evidentiary collection kits shall be developed and made
31 available, subject to appropriation, to appropriate medical
32 providers by the highway patrol or its designees and eligible crime
33 laboratories. Such kits shall be distributed with the forms and
34 procedures for gathering evidence during forensic examinations of
35 victims of a sexual offense to appropriate medical providers upon
36 request of the provider, in the amount requested, and at no charge
37 to the medical provider. All appropriate medical providers shall,
38 with the written consent of the victim, perform a forensic
39 examination using the evidentiary collection kit and forms and
40 procedures for gathering evidence following the checklist for any
41 person presenting as a victim of a sexual offense.

42 5. All appropriate medical provider charges for eligible
43 forensic examinations shall be billed to and paid by the department
44 of health and senior services. No appropriate medical provider
45 conducting forensic examinations and providing medical treatment
46 to victims of sexual offenses shall charge the victim for the forensic
47 examination. For appropriate medical provider charges related to
48 the medical treatment of victims of sexual offenses, if the victim is
49 an eligible claimant under the crime victims' compensation fund,
50 the appropriate medical provider shall seek compensation under
51 sections 595.010 to 595.075, RSMo.

52 6. For purposes of this section, the following terms mean:

53 (1) "Appropriate medical provider", any licensed nurse,
54 physician, or physician assistant, and any institution employing
55 licensed nurses, physicians, or physician assistants; provided that
56 such licensed professionals are the only persons at such institution
57 to perform tasks under the provisions of this section;

58 (2) "Evidentiary collection kit", a kit used during a forensic
59 examination that includes materials necessary for appropriate
60 medical providers to gather evidence in accordance with the forms

61 and procedures developed by the attorney general for forensic
62 examinations;

63 (3) "Forensic examination", an examination performed by
64 an appropriate medical provider on a victim of an alleged sexual
65 offense to gather evidence for the evidentiary collection kit;

66 (4) "Medical treatment", the treatment of all injuries and
67 health concerns resulting directly from a patient's sexual assault
68 or victimization.]

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